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COMMENTS OF GOVERNMENTS ON THE REPORT OF THE WORKING GROUP ON A DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT

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COMMENTS RECEIVED FROM MEMBER STATES

CZECH REPUBLIC

[Original: English]
[13 May 1994]

Status of the Tribunal and the relationship with the United Nations

The status of the International Criminal Tribunal should be governed by a multilateral international treaty which would at the same time provide for the relationship of the Tribunal with the United Nation system. It would not be practical, to establish the International Criminal Tribunal as one of the principal United Nations organs, because in such a case an amendment to the United Nations Charter would seem to be necessary. Now, when the establishment of the International Criminal Tribunal has become a realistic goal, it would not be wise to expose the hitherto results of the long years codification work to risks that the revision of the Charter implies.

The relationship of the Tribunal with the United Nations could be similar to the relationship of specialized agencies with the United Nations.

The Czech Republic therefore prefers the second alternative of Article 2.

Jurisdiction of the Tribunal ratione materiae

As far as the jurisdiction ratione materiae of the Tribunal is concerned, the draft statute puts special emphasis on crimes defined by international treaties. Nevertheless after the Second World War, crimes under general international customary law were prosecuted before international tribunals and their punishment is envisaged also in the Statute of the International Criminal Tribunal for Yugoslavia. Article 26 of the draft statute of the permanent International Criminal Tribunal extends the jurisdiction of the Tribunal to this category of crimes too.

The Czech Republic agrees with this concept. However Article 26 deals with two different questions at the same time: the jurisdiction ratione materiae in case of crimes under general international law and the way of acceptance of this jurisdiction. There is no reason why the question of jurisdiction ratione materiae could not be fully and comprehensively dealt with in a single article of the Statute Article 22. It would be preferable to insert the idea of Article 26, paragraph 2, subparagraph (a) in Article 22 as its second paragraph.

The jurisdiction of the Tribunal should in no case cover crimes under national law. The Czech Republic therefore recommends to delete subparagraph (b) of the second paragraph of Article 26.

As to the list of treaties on the basis of which Article 22 defines jurisdiction ratione materiae, it seems to be incomplete. Should the criteria for listing treaties in Article 22 be the existence of a precise definition of

the crime, the entry of the treaty into force as well as the treaty's largest acceptance by the international community, it is difficult to understand why the Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Convention against Illicit Trade in Drugs and Psychotropic Substances of 20 December 1988 are not on the list.

Another problem to be considered carefully is that not necessarily all the crimes defined by the above-mentioned treaties are of so serious nature as to be brought before the Tribunal. It would not be appropriate to overburden the Tribunal with cases which can be effectively punished by States themselves. A certain degree of seriousness of the breach should therefore be also a precondition for the jurisdiction of the Tribunal. The mechanism of the Tribunal should be reserved for the most serious international crimes, especially in the event when the prosecution before domestic courts cannot be guaranteed.

Acceptance of the jurisdiction of the Tribunal

From among the alternatives proposed by the Working Group, the Czech Republic would prefer Alternative B.

Nevertheless the Statute should provide for the establishment of an obligatory jurisdiction of the Tribunal which would be accepted ipso facto by the accession of the State to the Statute for at least a small group of crimes.

Therefore the possibility should be considered to combine the Alternative B with the concept of ipso facto jurisdiction for a relatively small group of crimes, which are beyond all doubt perceived by the international community as the most serious ones, such as those prohibited by Geneva Conventions on the Protection of Victims of War or the Convention against Genocide. In relation to all other crimes, the jurisdiction of the International Criminal Tribunal would be accepted by the "opting out" method.

Thus a kind of basic core of the jurisdiction ratione materiae would be created and States acceding to the Statute would in a credible way demonstrate their resolution to put the mechanism of the Tribunal into motion.

Security Council

The Czech Republic agrees to the concept of the draft Statute which enables the Security Council to submit complaints.

Despite the lack of an explicit provision to this end it would be appropriate for the Security Council to have the right to submit complaint to

the Tribunal only when alleged crimes were committed in situations envisaged in Chapter VII of the Charter. This should be clearly stipulated in the Statute.

It should be also out of any doubt that the general provision requiring the acceptance of jurisdiction of States does not apply and that the right of the Security Council to submit complaints does not depend on the State's consent with the jurisdiction of the Tribunal.